

[From the Washington Post, July 30, 2014]  
REVIEW FINDS TWO DECADES OF FORENSIC  
ERRORS BY FBI

(By Spencer S. Hsu)

Nearly every criminal case reviewed by the FBI and the Justice Department as part of a massive investigation started in 2012 of problems at the FBI lab has included flawed forensic testimony from the agency, government officials said.

The findings troubled the bureau, and it stopped the review of convictions last August. Case reviews resumed this month at the order of the Justice Department, the officials said.

U.S. officials began the inquiry after The Washington Post reported two years ago that flawed forensic evidence involving microscopic hair matches might have led to the convictions of hundreds of potentially innocent people. Most of those defendants never were told of the problems in their cases.

The inquiry includes 2,600 convictions and 45 death-row cases from the 1980s and 1990s in which the FBI's hair and fiber unit reported a match to a crime-scene sample before DNA testing of hair became common. The FBI had reviewed about 160 cases before it stopped, officials said.

The investigation resumed after the Justice Department's inspector general excoriated the department and the FBI for unacceptable delays and inadequate investigation in a separate inquiry from the mid-1990s. The inspector general found in that probe that three defendants were executed and a fourth died on death row in the five years it took officials to reexamine 60 death-row convictions that were potentially tainted by agent misconduct, mostly involving the same FBI hair and fiber analysis unit now under scrutiny. "I don't know whether history is repeating itself, but clearly the [latest] report doesn't give anyone a sense of confidence that the work of the examiners whose conduct was first publicly questioned in 1997 was reviewed as diligently and promptly as it needed to be," said Michael R. Bromwich, who was inspector general from 1994 to 1999 and is now a partner at the Goodwin Procter law firm.

Bromwich would not discuss any aspect of the current review because he is a pro bono adviser to the Innocence Project, which along with the National Association of Criminal Defense Lawyers is assisting the government effort under an agreement not to talk about the review. Still, he added, "Now we are left 18 years [later] with a very unhappy, unsatisfying and disquieting situation, which is far harder to remedy than if the problems had been addressed promptly."

Deputy Attorney General James M. Cole this month ordered that reviews resume under the original terms, officials said.

According to the FBI, the delay resulted, in part, "from a vigorous debate that occurred within the FBI and DOJ about the appropriate scientific standards we should apply when reviewing FBI lab examiner testimony—many years after the fact."

"Working closely with DOJ, we have resolved those issues and are moving forward with the transcript review for the remaining cases," the FBI said.

Emily Pierce, a Justice Department spokeswoman, said: "The Department of Justice never signed off on the FBI's decision to change the way they reviewed the hair analysis. We are pleased that the review has resumed and that notification letters will be going out in the next few weeks."

During the review's 11-month hiatus, Florida's Supreme Court denied an appeal by a death-row inmate who challenged his 1988 conviction based on an FBI hair match. James Aren Duckett's results were caught

up in the delay, and his legal options are now more limited.

Revelations that the government's largest post-conviction review of forensic evidence has found widespread problems counter earlier FBI claims that a single rogue examiner was at fault. Instead, they feed a growing debate over how the U.S. justice system addresses systematic weaknesses in past forensic testimony and methods.

"I see this as a tip-of-the-iceberg problem," said Erin Murphy, a New York University law professor and expert on modern scientific evidence.

"It's not as though this is one bad apple or even that this is one bad-apple discipline," she said. "There is a long list of disciplines that have exhibited problems, where if you opened up cases you'd see the same kinds of overstated claims and unfounded statements."

Worries about the limitations and presentation of scientific evidence are "coming out of the dark shadows of the legal system," said David H. Kaye, a law professor at Penn State who helped lead a Justice Department-funded study of fingerprint analysis and testimony in 2012. "The question is: What can you do about it?"

Courts and law enforcement authorities have been reluctant to allow defendants to retroactively challenge old evidence using newer, more accurate scientific methods.

The Justice Department and FBI inquiry, which examines convictions before 2000, could provide a way for defendants to make that challenge. Because the government is dropping procedural objections to appeals and offering new DNA testing in flawed cases if sought by a judge or prosecutor, results could provide a measure of the frequency of wrongful convictions.

Responding to the FBI review, the accreditation arm of the American Society of Crime Lab Directors last year recommended that labs determine whether they needed to conduct similar reviews, and New York, North Carolina and Texas are doing so.

According to a Justice Department spokesman, officials last August completed reviews and notified a first wave of defendants in 23 cases, including 14 death-penalty cases, that FBI examiners "exceeded the limits of science" when they linked hair to crime-scene evidence.

However, concerned that errors were found in the "vast majority" of cases, the FBI restarted the review, grinding the process to a halt, said a government official who was briefed on the process. The Justice Department objected in January, but a standoff went unresolved until this month.

After more than two years, the review will have addressed about 10 percent of the 2,600 questioned convictions and perhaps two-thirds of questioned death-row cases.

The department is notifying defendants about errors in two more death-penalty cases and in 134 non-capital cases over the next month, and will complete evaluations of 98 other cases by early October, including 14 more death-penalty cases.

No crime lab performed more hair examinations for federal and state agencies than the 10-member FBI unit, which testified in cases nationwide involving murder, rape and other violent felonies.

Although FBI policy has stated since at least the 1970s that a hair association cannot be used as positive identification, like fingerprints, agents regularly testified to the near-certainty of matches.

In reality, there is no accepted research on how often hair from different people may appear the same. The FBI now uses visual hair comparison to rule out someone as a possible source of hair or as a screening step before more accurate DNA testing.

This month, the inspector general reported that inattention and foot-dragging by the Justice Department and the FBI led them to ignore warnings 15 years ago that scientifically unsupported and misleading testimony could have come from more than a single hair examiner among agents discredited in a 1997 inspector general's report on misconduct at the FBI lab.

The report said that as of 1999, Justice Department officials had enough information to review all hair unit cases—not just those of former agent Michael P. Malone, who was identified as the agent making the most frequent exaggerated testimony.

By 2002, Maureen Killion, then director of enforcement operations, had alerted senior criminal division officials to "the specter that the other examiners in the unit" were as sloppy as Malone, the inspector general said.

"This issue has been raised with the FBI but not resolved to date," Killion wrote to then-Assistant Attorney General Michael Chertoff and his principal deputy, John C. Keeney, in July 2002, the report said.

Twelve years later, the Florida case shows the continued inadequacy of officials' response.

Duckett, then a rookie police officer in Mascotte, Fla., was convicted of raping and strangling Teresa McAbee, 11, and dumping her into a lake in 1987.

After a state police examiner was unable to match pubic hair found in the victim's underwear, prosecutors went to Malone, who testified at trial that there was a "high degree of probability" that the hair came from Duckett.

Such testimony is scientifically invalid, according to the parameters of the current FBI review, because it claims to associate a hair with a single person "to the exclusion of all others."

The Florida court denied Duckett's request for a new hearing on Malone's hair match. The court noted that there was other evidence of Duckett's guilt and that the FBI had not entirely abandoned visual hair comparison.

Duckett attorney Mary Elizabeth Wells confirmed this week that Duckett's case was under the FBI's review. Both Wells and Whitney Ray, a spokeswoman for Florida Attorney General Pam Bondi, said Thursday that parties had not been notified of results, but they otherwise declined to comment.

Duckett's case was eligible for the 1996 review as a Malone case but was omitted, even though the inspector general stated that "it was important to the integrity of the justice system" that all of Malone's death-penalty cases be immediately reviewed.

The Justice Department declined to comment on the omission.

## RECOGNIZING HOARD'S DAIRYMAN

Mr. LEAHY. Madam President, I would like to applaud Hoard's Dairyman for shining a light on an important and sometimes overlooked problem in rural America.

The article in their July 2014 issue, "When Life Turned Ugly," written by Andrea Stoltzfus, focused on the unique challenges that rural victims of domestic violence face in overcoming their abusers. They are often geographically isolated and unaware of the resources available to them or they lack the ability to reach a crisis center due to a lack of public transportation. There also may not be a local shelter to help them or they may not have the

financial means to set out on their own. These obstacles can make it particularly difficult for women in rural areas, like the dairy farm wives cited in the article, to escape abusive relationships.

From my days as a prosecutor in Vermont, I still vividly remember seeing the aftermath of this type of violence firsthand. I will never forget arriving on the scenes of domestic violence crimes. These experiences have spurred me in my roles as the chairman of the Senate Judiciary Committee and as a senior member of the Senate Appropriations Committee to work to prevent domestic violence and sexual assault. Most recently I was proud to sponsor the reauthorization of the Violence Against Women Act, VAWA, which the President signed into law in March 2013. Since VAWA was first enacted in 1994, it has helped to lower the annual incidence of domestic violence by more than half, it has raised awareness, and it has increased reporting of these crimes. VAWA has also improved the criminal justice system's ability to keep victims safe and hold perpetrators accountable. But there is still more that we can and should do.

One in every four women will experience domestic violence in her lifetime. That rate is even higher in rural areas. That is why I have worked to ensure that the domestic violence programs are adequately funded. In particular, I have pushed for increased funding for the Rural Domestic Violence Program. This program was established by the first VAWA to address the unique challenges faced by victims of domestic violence and dating violence in rural jurisdictions. This program supports the safety of rural victims of sexual assault, domestic violence, dating violence and stalking by funding projects uniquely designed to address and prevent rural crimes. It encourages cooperation among law enforcement and victim service providers, among others, to investigate criminal incidents and to offer treatment, education and prevention strategies.

As a husband, father, grandfather, and as a former prosecutor, I know we can and must do everything we can to combat domestic violence. I hope that the Hoard's Dairyman article will help raise awareness. No woman should feel trapped in an abusive relationship, and we must all work to ensure they are not.

I ask unanimous consent that a copy of the article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Hoard's Dairyman, July 2014]

WHEN LIFE TURNED UGLY

DOMESTIC VIOLENCE IS AN ALL TOO COMMON OCCURRENCE IN RURAL AMERICA

(By Andrea Stoltzfus)

From the road, the farm looks well kept, the fields prosperous. The animals are content, the garden is flourishing. But behind the closed doors, away from the curious on-

lookers, the helpful neighbors, a different scene unfolds—that of domestic violence among rural farm women.

What follows is a real-life conversation with a dairy farm wife who was a victim of domestic violence. As we move through the article, we will discuss the multiple layers of the issue and how women can find help.

"I ended up with this man because I wanted my dreams to come true of being married to a farmer, enjoying the farm and quality of life I had growing up on a dairy farm. I was after the same relationship my parents had. In my mind, it was all going to be so blissful. We would do chores together and share life together, enjoy being together and live happily ever after. I could not have been more wrong. I have learned that chasing dreams can be very costly, and I don't necessarily mean money."

#### BEHIND CLOSED DOORS

Domestic abuse in rural areas is just as likely to happen as in other communities, but women living in remote areas face other barriers to reporting the abuse or escaping the situation. The isolation of farms or ranches from towns can make it hard for emergency services to respond in a timely manner. Phone service may be spotty or even obsolete. "Going to town" could mean hours, not minutes, of travel time.

According to the Pennsylvania Coalition Against Domestic Violence website, the rural culture plays a role in making abuse reporting difficult.

"A 'rural culture' often includes everyone working together and knowing what is going on in each other's lives. It is likely that law enforcement, judges, social services and health care workers, faith leaders, and others know both the victim and the abuser. As a result, it may be more uncomfortable to share what is happening behind closed doors. Victims may feel that people won't take their situation seriously. In addition, there may be strong ties among extended families that mean breaking up the family is frowned upon."

"The people I got most of my help from were strangers. Neighbors, friends, family acted like I had the plague. How could this happen in our family, in our neighborhood, in our safe small town?"

Additionally, women may be partners in the farm, not only in the marriage, but in the daily workload and the financial end of the business. The farm or ranch may be the only source of family income, and the victim may be reluctant to leave as she has no other economic resources available.

Rural women have strong emotional ties to the land and livestock. Leaving could mean neglect or harm for the animals she cares for. Living on farms means more access to things that could be used as weapons—axes, chains, pitchforks, guns—working with farm equipment can be a ready excuse for injuries.

"I even ended up driving myself to the ER the morning of my daughter's 8th birthday getting five staples placed in my scalp where I got hit with a pipe for some stupid reason, then returned home to finish milking cows. There were several events like this. I had a bruise all down my arm, and I told people at work that the milk tank cover fell on my arm, and that's why it was all black."

Domestic abuse isn't always about physical abuse—it can also mean sexual abuse, emotional abuse or financial abuse. According to the Nebraska Domestic Violence Sexual Assault Coalition, it is important to know there is not "one way" an individual is abusive. When one abuse tactic no longer provides the abuser the results he/she wants, they will change to another to get the desired results.

"The milk price had nothing to do with it—he hit before we had our own herd. The

crops, the weather, nothing had a thing to do with it. My husband loved the control, the power he had over me.

"It started basically the day after I married him. At that point, I became property. I remember the chute to the gutter cleaner breaking into many pieces and me not being able to shut the gutter cleaner off fast enough.

The memory of being screamed at, called vulgar names, made to feel totally worthless and brought down to tears for the first time are etched in my mind. It seemed like whenever stressful events such as this happened, he would transfer his anger at the situation to me. I would frequently get pushed and kicked.

He gradually progressed from just name calling, screaming and physical abuse to making threats of killing me, pointing his finger at my forehead and saying 'bang.'"

#### OPTIONS SEEM FEW

Why don't victims leave the situation?

The reasons are many—including the inability to actually leave the farm—as they may not have access to a vehicle or public transportation. A shelter or services could be miles away, with no advocates or access to legal aid. Even if a victim decides to pursue legal assistance, it may not be as easy as it seems.

"I know it seems like this is a black and white issue, but it's really not. There were lots of things to think about—I knew I could not run this farm without him here, and most of all I never wanted at any point to see the farm fail. Many thoughts raced through my mind:

Do I call the police? No. If he gets arrested, when he gets out, it will only be worse.

Do I tell people? No. That only means embarrassment and people knowing that I am not as strong as I seem to be.

When I threatened to divorce him and tell him he would have to sell out to get my name off loans, he would threaten to kill me and kill my family."

Most victims' services groups recommend having an "escape plan" in place, which includes the actions to get to a safe place and the items to take with them. Making a primary care provider aware of the home situation can be part of the plan.

"I must also add that, through it all, when I had doctor appointments, the doctor and I always discussed the issues, but I always told the doctor that I felt safe and always had an escape plan. The doctor recommended I go see a psychiatrist, which helped me through a lot of it and gave me the inner strength to actually leave.

I realized that, when it got to the point of me saying that the day he died would be the happiest day in my life, this was no place to be mentally or physically. I also went to the county resources for domestic abuse, but all it seemed they wanted to do was rush me in front of a judge to get a restraining order, which was not the route I wanted to take. I was also told that I should go to the police from the threats of death he would constantly make, but once again I knew I could not run the farm, and I knew the consequences would be far worse."

Phone hotlines, internet sites and local community members can be a lifeline to an abuse victim. However, limited phone coverage, the threat of the abuser finding the sites viewed or neighbors who "don't want to get involved" can all be barriers to finding help.

"Even though resources are out there, it's not as simple as just utilizing them, as every situation is different, the fears are different and at different intensities, the degree of abuse is different, the inner strength of the victim is different, the family support is different, the family dynamics are different, so

sometimes it's just not that simple as seeking out resources."

### CRISIS IN GAZA

Mr. LEAHY. Madam President, the crisis in Gaza is extremely distressing, particularly to those who had hope for Secretary of State Kerry's years of shuttle diplomacy between the Government of Israel and the Palestinian Authority.

After seeing several similar attempts fail in the past, we know that for such diplomacy to succeed over the long term it will require the participation not only of representatives of the Israeli and Palestinian parties to the conflict but also the active support of Egypt, Jordan, Turkey, and the other Arab states.

Prime Minister Netanyahu and President Abbas are not able to reach an agreement to end the conflict themselves. Also, any agreement that lacks the support of Hamas or that cannot withstand the active opposition of Hamas will almost certainly fail.

According to the Government of Israel, at least 2,600 Hamas rockets and mortars have been fired indiscriminately toward Israel, forcing thousands of Israelis into basements and bomb shelters. Fortunately, most have landed harmlessly, and the U.S.-supplied Iron Dome missile defense system has intercepted many others.

The latest report of the United Nations Office for the Coordination of Humanitarian Affairs paints a chilling picture of death and destruction in Gaza.

Hamas has placed rocket launchers, ammunition, and tunnels in the midst of densely populated residential areas, even in mosques and U.N. facilities, and they are being targeted by Israeli bombs, missiles, and tank shells. Of course, civilians are literally trapped in the crossfire. As of today, at least 1,118 Palestinians have been killed, 6,233 injured, and 240,000 displaced from their homes, many of which have been damaged or destroyed. The overwhelming majority of the victims have been civilians.

It is clear that Hamas's leaders, who specialize in terrorist tactics, care far more about their fighters than the safety of Gaza's civilian population. Yet even safe havens, such as clearly marked United Nations schools and hospitals, have been hit by Israeli bombs or missiles, and at least one may have been hit by a Hamas rocket. Many people, including children, seeking shelter have been killed and injured as a result.

During this same period, 56 Israeli soldiers have been killed, 400 have been wounded, and 3 Israeli civilians have died.

I sympathize with the argument that Israel had little choice but to respond forcefully to Hamas's rocket attacks. It is hard to imagine any government faced with a similar threat to its citizens not responding.

I also support, as we all do, the Israeli Government's goal of eliminating Hamas's heavy weapons and destroying the dozens of tunnels that are used to smuggle them into Gaza and to enable Hamas fighters to sneak into Israel to kill Israelis.

But this is not the first time Israel has sought to achieve these goals only to fall short, at great human cost. Operation Cast Lead in 2008 resulted in 1,400 Palestinian deaths and the deaths of 3 Israeli civilians and 6 Israeli soldiers. Then in 2012 there was Operation Pillar of Defense. Each time, despite the destruction of Hamas's weapons, launchers, and command posts, Hamas remained in control of Gaza.

After each of these operations, Hamas rearmed and is as determined today as it was 2 years ago. It does not appear that either goal, even if justified and laudable, can be achieved for the long term—if at all—without inflicting unacceptable civilian casualties.

Israeli authorities stress that its army tries its best to avoid civilian casualties. They know the impact each innocent death has on world opinion and on the Palestinian people. Thousands of Palestinians in the West Bank, many of whom despise Hamas, have joined in demonstrations against Israel because of the loss of civilian lives in Gaza.

But what is often ignored in the impassioned debate over this issue, including by those who rightly point out that the Israeli military at times provides prior warning to civilians of an imminent attack, is that Gaza is not like anywhere else. Its residents cannot flee to safety in a neighboring country, as millions of Syrians have done. They cannot even escape by boat. Shelters in Gaza that should be safe are not safe. The people of Gaza are, for all practical purposes, defenseless, trapped, and unable to avoid the violence.

Hamas has insisted that it will not cease its attacks until Israel ends its export, import, and border restrictions on Gaza, which the people of Gaza, who lack safe water, sanitation, reliable electricity, and other basic necessities, say have made their daily lives nearly impossible. With each passing day, condemnation of the violence has intensified. Yet the death toll has continued to rise.

I commend Secretary Kerry for his efforts to broker a humanitarian ceasefire. There never has been a military solution to the Israeli-Palestinian conflict, and there is not one today. He deserves our strong support.

If the ceasefire announced today holds and if the United States continues to serve as the principle diplomatic intermediary, there needs to be some new thinking regarding our negotiating strategy. We cannot afford another dozen years with nothing to show for it, with the chasm between Israelis and Palestinians even deeper, with radical extremists further emboldened,

and yet another calamity like the one we are witnessing today.

It is difficult to see how that will be prevented if Hamas continues to reject Israel's right to exist and refuses to renounce terrorism, which is fundamental to any solution that brings lasting peace and security to both Israelis and Palestinians, nor is it likely to be prevented absent a decision by Israel to substantially ease its economic restrictions on Gaza. That may be the only way to eliminate Hamas's excuse for its rocket attacks, to bring desperately needed economic development to Gaza, and to create the necessary conditions for the disarming of Hamas.

With each passing day, the grave consequences for the people of Gaza and Israel, for stability in the region, and for the security of the United States have become more apparent. The White House should use every ounce of its influence to help bring this tragic chapter of history finally to an end.

### CYPRUS

Mr. REID. Madam President, I rise today in recognition of the 40th anniversary of Turkey's invasion of Cyprus in July 1974, which resulted in the division of Cyprus.

In 1974, a Turkish military invasion divided Cyprus into two de facto regions, forcing tens of thousands of Cypriots to flee their homes. Today, Turkish troops continue to occupy northern Cyprus and, after four decades, the country remains divided.

This month, the United States remembers those who were forced to flee their homes and lost their property, and we acknowledge the economic, political, and humanitarian impacts of this division. I stand to reaffirm our commitment and support for a comprehensive agreement to achieve reunification.

I am proud of the strong relationship between the United States and the Republic of Cyprus, and of our mutual commitment to democracy, counterterrorism, and economic development. I look forward to the day when this important partnership is made even stronger by a unified Cyprus.

I am encouraged by the February 2014 announcement that Cypriot President Nicos Anastasiades and Turkish Cypriot leader Dervis Eroglu would resume long-stalled reunification talks. I am hopeful that these meetings will lay the groundwork for peaceful negotiations that will result in a fair and lasting solution.

### RECOGNIZING GEORGE WASHINGTON UNIVERSITY PROGRAMS

Mr. REID. Mr. President, I rise in recognition of the George Washington University Native American Political Leadership Program and the INSPIRE Pre-College Program.